



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 19 2000

CC:TEGE:EOEG:EO1:TJWolf
FREV-116339-00

MEMORANDUM FOR Acting Director, EO Rulings & Agreements

FROM: Assistant Chief Counsel (Exempt Organizations/
Employment Tax/Government Entities)

SUBJECT: [REDACTED] ("Foundation")

This is in response to your memorandum of August 24, 2000, in which you seek our concurrence that Foundation qualifies for an exemption under section 501(c)(3) of the Internal Revenue Code

The information included in the underlying file indicates that Foundation will engage in two activities. The first will be granting an annual scholarship to a student enrolled at [REDACTED] ("University") in [REDACTED]. The second activity will be to provide funds to assist the [REDACTED] at University to fulfill its educational activities.

University has approximately [REDACTED] students of which [REDACTED]% are affiliated with [REDACTED]. Prior to a [REDACTED] decision to close [REDACTED] residential housing, [REDACTED] owned houses located on University land that was leased to the [REDACTED] or house corporation. Now, all [REDACTED] houses are non-residential. Subsequent to the closing of the [REDACTED] houses, University purchased [REDACTED] houses and converted them into student housing. Over [REDACTED] University students presently live in a University housing complex known as the [REDACTED] consisting of buildings that used to be [REDACTED] houses located on [REDACTED]

The [REDACTED] was established at University in [REDACTED] and its residence ([REDACTED]) was constructed in [REDACTED] on University property under a long-term lease through [REDACTED]. It occupies a location on the [REDACTED] that is closest to the University campus. The [REDACTED], the titleholder to the facility, has determined that it is necessary to upgrade the [REDACTED] in

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[REDACTED]

order to assure that the fraternity would continue to exert a positive influence on the university community,

[REDACTED]

Although it is contemplated that undergraduate and alumni members of [REDACTED] will use portions of the renovated [REDACTED] the alumni association of [REDACTED] proposes to enter into a [REDACTED] year lease agreement with University (subject to renewal options by University) that guarantees University the use of the [REDACTED] floors of the renovated [REDACTED] chapter house. University will have under the lease (1) exclusive use of the Main Level except for the Living Room which it will share use with [REDACTED] (2) exclusive use of the [REDACTED] level including the guest suites; and (3) exclusive use of the [REDACTED] level with the exception of the [REDACTED]

The portion to be financed by the Foundation grant will not exceed the costs involved in design or construction of areas to be used for "educational" purposes. Foundation will take measures to assure that the grant is used exclusively for its intended purposes by requiring the Alumni Association to execute a written commitment to use the grant in such a manner and to return any part of the grant not so used.

In addition, in its letter dated August 8, 2000, Foundation makes the following representations:

1. The Conference Room (Large Group Meeting Room) on the main floor will be used exclusively by University except for limited use by [REDACTED] for such events like Homecoming and reunions.
2. The Educational Program Support Room (EPSR) will be used exclusively by University. The room will provide a walk-in location for [REDACTED] students to use copy machines, a word processing service, long distance telephone directories, and fax machines.
3. There will be [REDACTED] rooms on the [REDACTED] floor identified as study rooms. [REDACTED] to [REDACTED] students will be assigned to each room on a semester by semester schedule. [REDACTED] percent of the study carrels will be used by [REDACTED] and other carrels will be assigned based on requests by academic departments, the University honors program, or individual professors. All of these carrels will be available to students assigned during the same hours that other University public study areas are available.

- [REDACTED]

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides, in part, that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 64-118, 1964-1 C.B. 182 concludes that a corporation, fund, or foundation, organized for the purpose of aiding and assisting in the education of students affiliated with a fraternity at a college or university, whose primary activity is the operation and maintenance of a chapter house, on a rental basis, for the use and benefit of the members of a local chapter of the fraternity, does not qualify for exemption as an educational organization within the meaning of section 501(c)(1) of the Code.

Based on the facts and circumstances of this case, we conclude that the grants made by Foundation for the purpose of reconstructing the [REDACTED] will be made for exclusively educational purposes within the meaning of section 501(c) of the Code.

[REDACTED]

If you have any further questions, please contact Thomas Wolf at 2-4123.

Mary Oppenheimer

By: James Brokaw
James Brokaw
Chief,
Exempt Organizations Branch 1